IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.2001 OF 1993.

Ravinder chandra Kundu : Petitioner

versus

Ravikiran Urban Co-operative

Bank Ltd and anr. : Respondents.

Mr.A.D.Pise i/by Ms.A.R.S.Baxi for the petitioner.

None for the respondents.

CORAM : D.G.DESHPANDE, J.

DATED : October 18, 2006.

ORAL ORDER

1. Heard learned advocate for the petitioner. Nobody is present for the respondents though served.

2. The petitioner, by this petition, challenges legality and validity of recovery

certificate issued against him at the instance of respondent No.1 on the ground that before issuing the recovery certificate an opportunity of being heard was not given to him, particularly when his contention that he has not taken loan from the bank.

3. The learned advocate for the petitioner relied upon the judgment of this Court reported in **2005 (2) ALL MR 392 [Ganeshkumar Makhanlal Chandak & Anr. v. Nagpur Urban Co-op Bank Ltd. & Anr.].** In that case the Urban Bank filed an application under Section 101 before the Recovery Officer for recovering a sum of Rs.One lakh and odd from the petitioners with interest. In that case, notices were given to the petitioners by the Recovery officer; they appeared; filed their written statement raising all the contentions, but they were not heard and, the recovery certificates were issued.

4. In the present case no show cause notice was issued by the Recovery Officer before issuing recovery certificate and, therefore, there is no question of hearing the petitioner. By the aforesaid reported judgment, the recovery

certificates issued by the Recovery Officer, in that case, were quashed and set aside as being against the principle of natural justice. Therefore, following the same view, this petition is required to be allowed. Hence I pass the following order :-

:ORDER:

Petition is allowed.

Recovery certificate is quashed and set aside.

The Recovery Officer shall, after the petitioner furnishes certified copy of this order, hear the petitioner and then decide the issue according to law.

If the Recovery Officer comes to a conclusion that the petitioner is liable for recovery, an amount of Rs.5000/- deposited by the petitioner before the lower authority shall be taken into consideration.

Rule is made absolute in the above terms.

[D.G.DESHPANDE, J.]